

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.667 OF 1982

THE HON'BLE MR. JUSTICE Y.B. BHATT:

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Appearance:

Mr. N.D. Nanavati, advocate for the petitioner.

Mr. P.M. Thakkar, advocate for the respondent.

CORAM: Y.B. BHATT J.

Date of Decision: 08-12-1995

JUDGEMENT

1. The present revision is one under section 29(2) of the Bombay Rent Act (hereinafter referred to as 'the said Act'), wherein the respondent is the original defendant-tenant.

2. Before proceeding with the contentions raised in the present revision, it must be kept in mind that the present revision is one under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In the context of

the powers of the High Court exercisable in such revisions, the ratio laid down by the Supreme court in the case of *Helper Girdharbhai* (AIR 1987 SC 1782) is most relevant. In the said decision the Supreme Court has observed in substance that in exercising revisional power under section 29(2) the High Court must ensure that the principles of law have been correctly borne in mind by the lower court. Secondly, the facts have been properly appreciated and a decision arrived at taking all material and relevant facts in mind. In order to warrant interference, the decision must be such a decision which no reasonable man could have arrived at. Lastly, such a decision does not lead to a miscarriage of justice. But, in the guise of revision, substitution of one view where two views are possible and the Court of Small Causes has taken a particular view, is not permissible. If a possible view has been taken, the High Court would be exceeding its jurisdiction if it substitutes its own view in place of that of the courts below because it considers it to be a better view. The fact that the High Court would have taken a different view is wholly irrelevant.

2.1 It must also be noted that in the case before the Supreme Court, the findings of the trial court were reversed in appeal, and it was the appellate decision which was before the High Court. The High Court in the revision under section 29(2) reversed the finding. Thus, in the revision before the High Court, it was not a case of concurrent findings of fact.

3. The landlord had filed the suit against the tenant for recovery of the tenanted premises on various grounds available to him under the provisions of the said Act inter alia that the tenant has erected a permanent structure on the premises without the written permission of the landlord, he is guilty of change of user of the leased premises, illegal subletting, causing damage to the property, reasonable and bonafide requirement of the landlord, and the tenant being in arrears of rent for more than six months. However, it appears that when the matter was taken up for hearing and the evidence recorded by the trial court, the grounds of arrears of rent, reasonable and bonafide requirement of the landlord, and illegal subletting were not pressed. The trial court, after considering the evidence on record, dismissed the suit of the plaintiff, so far as decree for eviction is concerned, but passed a money decree in respect of the rent due and payable.

4. The landlord, therefore, preferred an appeal before the District Court under section 29(1) of the said Act.

5. The only question which was thus before the appellate court was whether the permanent structure put up by the tenant was without the previous permission in writing of the

plaintiff. After considering the entire material on record, the lower appellate court found that the permanent structure so put up, was constructed by the defendant after obtaining the permission in writing from the landlord. The appellate court, therefore, dismissed the appeal of the landlord.

6. It is under these circumstances that the landlord has preferred the present revision.

7. As already discussed hereinabove, the scope of the present revision is extremely limited and in order to succeed, the petitioner herein must establish that the appreciation of evidence on the part of the lower appellate court is a perversity in law or is a case of non-application of mind or a case of no evidence. In view of the decision of the Supreme Court in the case of *Helper Girdharbhai* (supra), it is equally obvious that this court cannot take another view on the appreciation of evidence, merely because another view may just be possible.

8. In the context of the well settled position in law I may now examine the treatment given by the lower appellate court to the evidence on record. The tenant has sought to prove the previous permission in writing given by the landlord, by producing the document containing such permission, which is referred to as Exh.3. It was produced by the defendant during his examination-in-chief. He has referred to the contents of this document, and has made all the necessary averments as regards the contents of the document, and has also referred to other aspects as to the execution of the document in order to prove that the same can be exhibited and taken on record as primary evidence in support of the fact. He has deposed that the person who had in fact written down the document was one Banabhai by name whom he does not personally know. However, this scribe had written the document as dictated by the Manager of the landlord, in the presence of the defendant tenant. It is emphasised that the document was both dictated and taken down in the presence of the defendant. The Manager of the plaintiff-landlord had also signed the document in the presence of the tenant.

8.1 In spite of such clear evidence on record, the trial court chose to give exhibit only to the signature portion of the document and the entire document was not exhibited. When this question was examined by the appellate court, the said court rightly came to the conclusion that looking to the oral evidence of the defendant, he had proved the contents of the document as a whole, and that, therefore, the document as a whole must be exhibited. The appellate court had also taken into consideration that the trial court had given no reason whatsoever for exhibiting only the signature part of the

document and not the entire document as a whole.

8.2 It may be noted here that the scribe who had in fact written down the document was not known to the defendant, but was known only to the Manager i.e. Chimanbhai. Admittedly the said Manager Shri Chimanbhai expired soon thereafter and was, therefore, not available to depose before the trial court. Thus, the defendant was the only person who could depose to its execution, signature and authenticity. In this context, it must also be noted that the document is produced by the defendant himself, and it cannot be suggested that the document does not come from the proper custody. Under the circumstances the appellate court was eminently justified in exhibiting the entire document as a whole.

8.3 However, it has rightly been noted that on the facts and circumstances of the case the defendant is an interested party, and in the absence of the scribe and in the absence of a Manager, who could have otherwise contradicted him, the contents of the said document cannot be blindly accepted. Thus, many other relevant pieces of evidence have been taken into account, and it is only after considering such corroborative evidence, that the appellate court has accepted the document as genuine.

9. The document permits the tenant to put up a permanent structure and also raises the prevailing rent from Rs.15 to Rs.20/- per month. It was clarified that the structure would be constructed by the tenant at his own expenses. The lower appellate court has extensively dealt with the aspect of raising the rent from Rs.15/- to Rs.20/- per month in consideration of grant of permission, and/or by altering the terms of tenancy. What is material is that on the one hand permission to put up this permanent structure has been granted, while simultaneously raising the rent. What is extremely significant in this context is that the increase in rent has been accepted by the tenant with effect from the date of the permission, and he has paid the increased rent accordingly. What is equally significant is that the landlord has accepted the increased rent without query. Thus, it cannot be suggested that the landlord was not aware that he had granted permission to the tenant to erect such a structure.

10. Some attempt has been made to put forward a submission to the effect that the defendant-tenant was not in a position to identify the signature of the Manager, inasmuch as he had no earlier occasion to be familiar with the hand-writing of the said Manager. Such a contention is not merely opposed to commonsense, but is also opposed to the provisions of the Indian Evidence Act. Moreover, this situation is covered by

the explanation below Section 47 of the Indian Evidence Act. Where the defendant categorically deposes that the Manager had signed the document in his presence, it cannot then be said that the defendant is not familiar with the signature of the said Manager.

11. So far as other intrinsic evidence as to the genuineness of this document is concerned, the conduct of the plaintiff is in itself significant. The plaintiff has in the plaint claimed the contractual rent at Rs.20/-, without making any reference to the fact whatsoever that initially the same was Rs.15/-, but was raised to Rs.20/- just prior to the suit. What is also significant is that the tenancy commenced from 1st December 1964, and it is in the context of this date that the landlord claimed rent at the rate of Rs.20/- per month in the suit. However, the rent note at Exh.29 clearly discloses that the initial letting was on a monthly rent of Rs.15/-. This rent note is dated 27th November 1964, takes effect from 1st December 1964, and is executed in favour of the plaintiff, through the said Manager Chimanbhai, who had inducted the defendant as a tenant. Thus the fact established hereby is that the initial letting was on a monthly rent of Rs.15/-, which was subsequently raised to Rs.20/-, and the plaintiff is significantly silent on this aspect not only in the plaint, but also in her deposition.

11. The conduct of the plaintiff long prior to the present suit as evidenced from the earlier exchange of notice and the reply thereto is also revealing. The landlord had earlier served a notice on the defendant at Exh.26, wherein the rent is specifically and categorically asserted to have been Rs.15/per month and the said assertion also states that since about one year passed the rent has been raised from Rs.15/- to Rs.20/-. This notice Exh.26 is dated 1st August 1968. This earlier correspondence clearly establishes that the initial letting was for Rs.15/- per month which was subsequently raised to Rs.20/- per month. This corroborates both the oral deposition of the defendant, and gives considerable credence and validity to the contents of the document in question.

12. The statutory notice on which the landlord suit is based is at Exh.62 dated 7th February 1976. Here again, the assertion is that the rent is Rs.20/- per month commencing from 1st December 1964 i.e. from the initial date of letting. This brings in two significant facts: (i) that the landlord makes no reference in the suit notice to the rent having been raised from Rs.15/- to Rs.20/- per month and (ii) that the landlord makes no reference to the earlier notice (dated 1st August 1968) wherein there is a positive assertion that the rent has been raised from Rs.15/- to Rs.20/- per month.

13. Perhaps the landlord was aware of the discrepancies that these documents would bring to the forefront, and for this reason the plaintiff in his examination-in-chief changes his version from that in the notice, and states that when the suit property in question was first let to the defendant, the rent was Rs.15/-. He, however, does not even then (in examination-in-chief) state further that the rent had thereafter been increased from Rs.15/- to Rs.20/-, nor does he refer to the date or period when such increase took place. It is only in his cross-examination that he admits that the rent had been increased. He further attempts a lame explanation that he had with him a copy of the original rent note (which fixed the rent at Rs.15/- per month), and that he had shown this rent note to his lawyer before the suit notice was sent and the plaint filed in the court. Nevertheless, the suit notice in the plaint referred to the rent as being Rs.20/- per month from the initial date of letting.

13.1 Furthermore, after the suit notice was served upon the defendant, the latter had replied thereto on 1st April 1976 (Exh.27). In this reply to the suit notice, the defendant clearly asserts that he has made the construction under the written permission of the Manager Shri Chimanbhai. In spite of this assertion on the part of the defendant, the fact that the plaint is completely silent on this aspect, speaks volumes about the intent of the plaintiff.

14. The lower appellate court has also dealt with the submission on the part of the landlord, that the landlord himself may not have been aware of the permission granted by the Manager. Obviously, such a submission or explanation would not hold water in the light of the documentary evidence on record discussed hereinabove. The very fact that the rent has been increased from Rs.15/- to Rs.20/-, was not outside the knowledge of the landlord, when the landlord admits that the copy of the rent note was available with him, and his admission that the earlier notice correspondence of the year 1968 was shown to his lawyer prior to the filing of the suit, completely demolishes such a suggestion.

15. The lower appellate court has also dealt with another aspect of the matter in the light of the evidence on record and with the correct perspective, which in my opinion, is completely justified. The plaintiff, in his cross-examination, has admitted that he has not visited the tenanted premises after the year 1968. The implication is that he used to visit the same earlier. The construction was put up after obtaining the consent in writing some time in the later half of 1965. Thus, at least, two and half years had been lapsed from the date of construction and the date of the prior notice viz. 1st August 1968. In this context what is significant is that

during the course of two and half years, the landlord can reasonably be expected to have seen or noticed the construction in question, and yet the earlier notice dated 1st August 1968 makes no complaint in that regard. In fact, there is no reference to the said construction at all.

16. It is on the sum totality of such evidence on record that the lower appellate court found that the plaintiff was aware of the written permission having been given to the tenant.

17. Another contention raised on behalf of the landlord was to the effect that the Manager is shown to have died on 10th May 1965, whereas the document bears a date six days thereafter. This discrepancy has been explained by the defendant, by stating that as per the oral discussion between the Manager and the tenant, which had led upto the grant of written permission, the defendant was to begin the construction on or about 17th May 1965, and it was for this reason that this date was put on the document, although the same was executed "in the fourth month". The defendant further explains that it was in the fourth month of that year that he had personally visited the manager, and the reason for this visit was both for the purpose of paying the rent for the third month, and to finalise the grant of permission. On the occasion of that visit, the tenant was asked to come back after a week or so during which the Manager would obtain the consent of the landlord i.e.. the plaintiff. It was on 22nd of that month that the defendant went back to the Manager and was informed that the owner had agreed to issue permission for construction subject to the condition that the rent will then be increased to Rs.20/-. The defendant being agreeable, the document was then dictated by the Manager Shri Chimanbhai to the said Scribe Bhanabhai, and signed by the Manager for and on behalf of the owner, all in the presence of the tenant. Thus, this discrepancy in the date of the document is in the opinion of the lower appellate court satisfactorily explained.

17.1 In this context I may state that if this court were in the shoes of the appellate court, it may very well have accepted this explanation on the part of the defendant, or may not have. That is neither here nor there. The function of this court while examining a revision under section 29(2) of the said Act, would not be justified in interfering with the findings of fact and/or appreciation of the evidence on record, merely because another view is possible. In this instance, I am of the opinion that the conclusions drawn by the appellate court, on the basis of the totality of the evidence on record are not farfetched, nor can they be said to be conclusions which no prudent person would draw. It, therefore, cannot be said that such appreciation of evidence

is a perversity in law.

18. Another contention sought to be taken is that the consent given under the signature of the Manager would not amount to a consent of the landlord. This contention is required to be noted, only to be rejected. By virtue of the definition of "landlord" as contained in section 5(3) of the said Act, a manager who handles the affairs of the owner of the property qua the tenants of such property, is also a "landlord" within the meaning of the said definition. Thus, the permission given under the signature of the Manager, is a permission given by the landlord, particularly when there is ample evidence to show that the plaintiff as owner of the property was also consulted by the Manager before the writing was executed in favour of the tenant. Furthermore, the receipts were issued in favour of the tenant by the aforesaid Manager, and these receipts have been accepted by the owner of the property (plaintiff) as binding. Thus he has accepted that the Manager was acting on his behalf.

19. In the premises aforesaid, the judgement and order of the appellate court is required to be sustained. This revision is, therefore, dismissed. Rule is discharged with no order as to costs.
